

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION FIVE**

**TYCO ELECTRONICS CORPORATION,<sup>1</sup>  
Employer**

**and**

**Case 05-RC-016471**

**INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE & AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA, UAW,  
Petitioner**

**DECISION AND DIRECTION OF ELECTION**

At issue in this case is whether 34 employees in the disputed classifications of product engineering, manufacturing engineering, production control, and environmental safety and health employees share such a close community of interest with the petitioned-for classifications of machine operators, assemblers, shipping and receiving, and other production and maintenance employees that their inclusion is necessary to constitute an appropriate unit.

The Petitioner contends that the disputed classifications of 34 employees do not share such a close community of interest with petitioned-for classifications of approximately 234 employees, and that the petitioned-for unit is *an* appropriate unit. The Petitioner further contends that the designers, engineers and technical associates in both product engineering and manufacturing engineering are technical employees, and therefore not appropriately included in an appropriate unit with production and maintenance employees.

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<sup>1</sup> At the hearing, the parties agreed to amend the petition and formal papers to include the full and correct name of the Employer.

The Employer contends that the disputed classifications of employees share a close community of interest with the petitioned-for unit, and that the petitioned-for unit is not appropriate. Further, the Employer agrees with the Petitioner that the engineers and technical associates are technical employees, but also specifically characterizes the parts clerk, materials planner, and materials associate as plant clericals. The parties stipulated at the hearing that any unit ultimately found appropriate would include the inspector<sup>2</sup> and group leader job classifications.

I have fully considered all of the record evidence, the relevant case law, and the arguments made by the parties at the hearing and in their post-hearing briefs. I find that the designers, the materials planners, and the manufacturing and product engineers are technical employees. With the exception of manufacturing engineering technical associate Angela Dodson, I find that the manufacturing and product engineering technical associates are technical employees. Under *Sheffield*, I find that all technical employees may be excluded from the petitioned-for unit, which is *an* appropriate unit for bargaining. See *The Sheffield Corp.*, 134 NLRB 1101 (1961). Further, I find that technical associate Dodson, the parts clerk, and the materials associate are plant clericals, and have a closer community of interest with the technical employees than with the employees in the petitioned-for unit. Finally, I find that the environmental health and safety coordinator also has a closer community of interest with the technical employees and plant clericals than with the petitioned-for employees.

In explaining how I came to my determinations, I will describe the Employer's operations and discuss the evidence regarding the employees in dispute. Then, I will set

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<sup>2</sup> The parties agree that David Byrne, Quality Associate, will be included on the *Excelsior* list, subject to challenge by either party.

out the applicable law, explain why the technical employees are not appropriately included in the unit, and explain why the plant clericals and environmental health and safety coordinator have a closer community of interest with the technical employees than with the petitioned-for unit. Finally, I will explain why the petitioned-for unit is an appropriate unit.

## **I. THE EMPLOYER'S BUSINESS OPERATIONS**

The Employer's Waynesboro facility manufactures application tooling, including hand tools and "applicators," which are used to repair washers and dryers and in the production of automobile wiring harness connectors. Roughly 84,000 square feet in size, the Waynesboro facility is divided into an administrative and office area, a lunch room and vending area, a shop floor, and a shipping and receiving area (which includes stores). The Waynesboro facility manufactures over 100,000 different parts. Lance Taylor is the Plant Manager.

The Waynesboro production cycle begins with a sales order. The product engineering department designs the parts or product to meet the specifications of the order. Once the product is designed, the order is then sent to manufacturing engineering, which writes programs, to determine whether the plant's machines can manufacture the parts necessary for the order. The order then goes to the production control department, which quotes to the customer the cost and time required to deliver the finished product. Upon the customer's approval, production control schedules the order, orders the necessary raw materials, and coordinates the manufacturing process, creating a "routing" or plan.

The raw materials are received into the shipping and receiving department and inspected. The inspectors notify production control that the raw materials have been received and are acceptable, at which point shipping and receiving take the raw materials to the appropriate machine operators, according to the prepared routing. Production control's routing tells the machine operators the sequence of tasks to be performed on the raw materials to make the parts required for the order.

The machine operators implement manufacturing engineering's programs, sometimes editing the programs themselves, and also seeking the engineers and technical associates' assistance in solving problems with the programs. The machine operator (or, sometimes, if the job is "hot" according to the dispatch list, the materials associate) delivers the finished job to the inspectors. "Prove-out" jobs (newly designed and manufactured parts) may require the product engineering department's engineers or technical associates, machine operators, and the inspectors to work together to perfect the manufacturing process for a part. Shipping and receiving stores the approved parts in inventory.

Once all the necessary parts have been manufactured, shipping and receiving delivers them to assembly, as determined by the dispatch list. The assemblers build the product. As in the manufacturing process, assembling prove-out jobs may require product engineering's assistance. Built products go back inspection and, if acceptable, are stamped and put back into inventory by shipping and receiving, which, once a job is complete, also pulls the products back out and packages them for shipping to the customer.

## **II. THE EMPLOYEES IN DISPUTE**

The job classifications at issue are employees in: (1) Product Engineering (designers, technical associates, a product engineer, and a parts clerk); (2) Environmental Health and Safety (coordinator); (3) Manufacturing Engineering (manufacturing engineers and technical associates); and (4) Production Control (materials planners and materials associate). The following is a description of each job classification, based on record evidence.

### **A. Designers**

There are four designers in Product Engineering. Designers examine the requirements of the customer's application tooling order and design the product. Designers are not required to have any education beyond a high school diploma. Their training is on-the-job. Designers work in offices and spend most of their time drawing. Two of the designers came from the shop floor: Bob Higman was an assembler, and Roy Knepper was a machinist. Neither has a degree. Designers exercise discretion in how they design parts. Scott Stine, Product Manager, testified that designers work with production employees in the "prove out" process and with assembly employees after manufacturing to ensure that their designs work and meet customer specifications.

Lynn Peiffer, Manufacturing Engineering Supervisor and former Plant Manager, first testified that designers spend approximately 20 percent of their time on the shop floor. Then Peiffer testified in response to the Hearing Officer's question that Manufacturing and Product Engineering employees have cubicles in offices and spend most of their time there. Finally, on rebuttal, he amended the time spent on the shop floor

percentage to 50 percent for all such employees. In contrast, Jeffrey M. Rathfon, CNC<sup>3</sup> Machinist, testified that such contact occurred once a week and amounted to less than one percent of his work. No other employee witness testified to having any contact with designers. Designers are salaried, non-exempt employees. Like all of the Product Engineering employees, designers report to Isaac Cruz, Product Engineering Supervisor. Cruz, in turn, reports to a Global Application Tooling Division executive located in Harrisburg, Pennsylvania.

### **B. Technical Associates (Product Engineering)**

There are three technical associates in Product Engineering: Nicole Wagaman; Della Gift; and Gregory Bailey. Each has a different role. Nicole Wagaman is a customer advocate. She tracks new designs, oversees parts procurement, and scheduling, and she tells assembly when a customer has special needs. Peiffer testified that Wagaman informs, but does not collaborate with, assemblers, yet these conversations take up 15 to 20 percent of her day. Della Gift works with customers to ascertain their requirements, and quotes prices and delivery times to them. She also acts as a backup for Wagaman. Peiffer testified that she has the same degree of contact with assemblers as Wagaman. Gregory Bailey troubleshoots problems with assemblers in prove-outs. Stine testified that Bailey spends most of his day on the shop floor. Peiffer testified that Bailey spends 80 percent of his time on the shop floor, which he later amended to 50 percent. John B. McIntyre, Quality Control Inspector, agreed that Bailey assisted with first-time builds (or prove-outs), but estimated that in doing so, Bailey spends “a couple of hours a week” on the shop floor. During a recent slow period, Bailey worked as an inspector for approximately two weeks. Kevin Scott McNulty, Manufacturing Engineering Technical

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<sup>3</sup> “CNC” stands for computer numerically controlled.

Associate, agreed that Wagaman and Bailey's jobs took them to the shop floor, but did not testify how often. Bailey's desk is currently located on the shop floor in Heat Treat, while Gift and Wagaman work out of offices in the administrative area of the facility. The technical associates all transferred from the shop floor. Bailey and Gift were in assembly, and Wagaman was in shipping and receiving. A high school diploma is the minimum education required for technical associates. The technical associates are salaried, non-exempt employees.

### **C. Product Engineer**

There is one product engineer in Product Engineering, Timothy Elbin. The Company recently changed the qualifications for engineers, and new hires must possess a four-year degree in engineering. Elbin does not possess a four-year degree, but was grandfathered-in. A salaried, exempt employee, Elbin does not clock in or track his time in Kronos. He has an office in the administrative area of the facility. Stine testified that Elbin assists assemblers in making sure that products meet customer specifications. Peiffer testified that Elbin spends 80 percent of his time on the shop floor. Quality Control Inspector McIntyre testified that, like Bailey, Elbin spends a couple of hours a week on the shop floor.

### **D. Parts Clerk**

The parts clerk is Deborah Rhoads.<sup>4</sup> The position requires a high school diploma and she works out of an office. Rhoads was originally in shipping and receiving at the

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<sup>4</sup> Peiffer and Ross Goldberg, Hand Tool Assembler and Hand Tool Assembly Laser Production Operator, both testified that Rhoads has recently worked overtime on Saturdays operating a laser marker (a machinist's job). Goldberg testified that Rhoads was trained on the laser for 10 minutes in his presence, while he was trained for two-and-a-half weeks. Goldberg admitted that he did not know whether Rhoads had received any additional training on the laser not in his presence.

now-closed Selinsgrove, Pennsylvania, plant. The parts clerk performs clerical duties and is a salaried, non-exempt employee. Rhoads enters parts required for new designs into the computer system, which must be done before designers can do their work. Peiffer testified that the parts clerk does not work with employees in the petitioned-for classifications on a day-to-day basis. CNC Machinist Rathfon agreed that he had only seen Rhoads in the office and never on the shop floor.

### **E. Environmental Safety and Health Coordinator**

The environmental safety and health coordinator is Ronald Lebo. The position requires a high school diploma. The coordinator is responsible for ensuring that the plant meets corporate requirements for safety and the environment. He does not perform the functions of the petitioned-for production and maintenance employees. Lebo is a salaried, non-exempt employee, who has a desk in the product engineering office. Stine testified that Lebo works with production and maintenance employees and spends 50 percent of his time on the shop floor. Employee Ronald L. Provard, who works in Salvage, testified that Lebo has “ordered” him to shovel snow and spread salt outside the building last winter, and to wear earplugs on the shop floor in July 2009. Provard testified that Lebo threatened to write him up if he did not comply, and that he has heard Lebo similarly threaten other employees more than ten times. Human Resources Advisor Sara Beth Wood testified that Lebo does not have the authority to discipline employees.<sup>5</sup> The coordinator reports to Manager Joseph Stachura. Stachura, in turn, reports directly to Taylor, the plant manager.

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<sup>5</sup> Despite the Union’s implication in its post-hearing brief that Lebo is a supervisor, I do not find it necessary to specifically decide whether the environmental safety and health coordinator is a statutory supervisor within the meaning of Section 2(11) of the Act.



### **F. Manufacturing Engineers**

Manufacturing engineers are salaried, exempt employees and work out of offices. They are required to possess a four-year degree to be eligible for hire. Eric Callaghan, Jennifer Guerrero, and Gary Piper have degrees. Like the product engineers, incumbent employees were grandfathered-in when the Employer recently implemented this educational requirement. Thus, Ron Stitely, Larry Kann, Greg Seylar, and Greg Leedy do not have degrees. Steity (mill operator), Seylar (grinder), and Leedy formerly worked on the shop floor. Manufacturing engineers do not clock in or use Kronos to track their time. There are eight manufacturing engineers, and their duties vary. Most write programs and processes to meet the customers' product specifications, but Guerrero, Callahan, and Piper do not write programs. Peiffer testified that manufacturing engineers spend about 50 percent of their time on shop floor. Yet, CNC Machinist Rathfon testified that he spends only 1 percent of his time working with manufacturing engineers. Manufacturing engineers report to Manufacturing Engineering Supervisor Peiffer, who, in turn, reports to Manager Stachura.

### **G. Technical Associates (Manufacturing Engineering)**

There are eight technical associates in Manufacturing Engineering. A high school diploma is required for the position, and a two-year engineering degree is preferred. Like engineers, some technical associates write programs but others do not. For example, Steve Hess quotes machining and assembling for other companies; he acts as a liaison between the Employer and their customers. Chris Runshaw writes CNC programs for prove-outs. Jeff Pieper, Steve Bakner, and Charles Lakatos write programs. Neil Miller writes programs for new lathes. Kevin Scott McNulty programs machines, and works

closely with Randy Gantz, a machinist. Stine characterized Angela Dodson as a “catchall.” Her duties apparently involve filing routings in cabinets located on the shop floor. Runshaw was a machinist. He transferred to manufacturing engineering in September 2008. Bakner transferred from the shop floor on November 23, 2009. Lakatosh and Miller worked on the shop floors of other companies. All of the technical associates work out of offices. They are required to have “solid” Microsoft Office computer skills and demonstrate knowledge of programming software. Technical associates are salaried, non-exempt employees. Technical associates report directly to Manufacturing Engineering Supervisor Peiffer. Stine testified that Runshaw is on the shop floor “morning, noon, and night.” He also testified that Miller spends half of his day on the shop floor. Yet, CNC Machinist Rathfon testified that he sees technical associates “very rarely.” D. Jason Nye, also a CNC Machinist, testified that he sees Pieper on the shop floor one-and-a-half to two hours a week. Sandra Rodriguez, Burr Operator, testified that she goes to see manufacturing technical associates in their offices when corrections are needed to a routing, once a week or every other week. Those conversations might last a couple of minutes. The technical associates make the routing adjustments on their office computers and they never come to the shop floor to see her.

#### **H. Materials Planners**

Materials planners are required to have an Associates degree in logistics or 3 to 5 years’ experience in scheduling, but HR Advisor Wood testified that a four-year degree is strongly preferred. Materials planners are in charge of parts; they keep track of what parts are available and where the parts are. Stine testified that machinists and assemblers cannot do their jobs without materials planners because they tell the production workers

what to do next. All of the materials planners except Andrew Bakner came from the shop floor. Materials planners work out of offices and are salaried, non-exempt employees. Stine testified that materials planners are more likely to spend time in assembly than manufacturing, and that while some spend an hour a day on the shop floor, Bev Schindledecker spends almost all of her time there. Yet, CNC Machinist Rathfon testified that he “never” sees materials planners on the shop floor. Production Supervisor Becky Russ supervises the materials planners and materials associate. She reports to Materials and Planning Manager Rick Smith, who reports directly to Taylor.

### **I. Materials Associate**

The materials associate is Anne Thomas. Her position is salaried, non-exempt. Thomas spends substantial time on the shop floor although she works out of an office. She seeks out the status of machining jobs and communicates their priority to the machine operators. Burr Operator Rodriguez testified that she has had one to two minute conversations with Thomas, where Thomas is seeking particular orders and wants to know where they are. The conversations do not occur daily. Likewise, Blackening and Paint employee, William Paul Kessler, testified that the only employee who had ever come to his work area was Thomas. She came in to write “hot” across the top of a routing, told him it was there, and left. Kessler testified that such interactions have occurred three to four times in the four months he has worked for the Employer and their interactions lasted “a minute.”

### **III. TECHNICAL EMPLOYEES**

In its post-hearing brief, the Employer argues that the designers, manufacturing and product engineers, and technical associates are technical employees, who, under

*Sheffield*, must be included in an appropriate unit with the petitioned-for employees. The hearing transcript and its post-hearing brief demonstrate that the Petitioner, too, assumes that individuals in the disputed job classifications are technical employees. I agree with the parties that the designers, manufacturing and product engineers, and technical associates with the exception of manufacturing engineering technical associate Angela Dodson are technical employees. I also find that the materials planners are technical employees. *See, Weldun International*, 321 NLRB 733, 735 (1996) (production control scheduler, who schedules the date for materials to arrive, the date for wiring and assembly, and the number of people required for the job involves work skills and content that ‘are clearly technical and approaching professional’ and ‘bear no relationship to those of production employees.’). The hearing transcript amply demonstrates that, while not strictly professional as defined in the Act, all of these employees’ work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training. *See Litton Indus. of Maryland, Inc.*, 125 NLRB 722, 724 (1959) (overruled on other grounds by *The Sheffield Corp.*, 134 NLRB 1101 (1961)).

The Board uses a *Sheffield* analysis when determining whether technical employees should be included in a production and maintenance unit. The factors in such an analysis are: (1) the desires of the parties; (2) the history of bargaining; (3) similarity of skills and job functions; (4) common supervision; (5) contact and/or interchange with other employees; (6) similarity of working conditions; (7) the type of industry; (8) the organization of the facility; (9) whether the technical employees work in separately situated and separately controlled areas; and (10) whether any union seeks to represent technical employees separately. *Inland Steel Co.*, 308 NLRB 868, 869 (1992). Applying

those factors to the present case, I find that the petitioned-for-unit, excluding technical employees is an appropriate unit for bargaining, and that the technical employees may constitute a separate appropriate unit.

#### **A. Organization of the Facility, Working Areas, and Supervision**

The Waynesboro facility is functionally organized in general, and this functional organization extends to the technical employees as well. In Product Engineering, there are four designers, three technical associates, and one product engineer. They have cubicles in the Product Engineering section of the office area of the facility. Their department is enclosed and has a single door that opens onto the shop floor. They all report to a single supervisor, Isaac Cruz. The Manufacturing Engineering department has eight manufacturing engineers and eight technical associates who work in a separate, enclosed room in the facility's office area, along with their supervisor, Lynn Peiffer. Likewise, the Production Control department, where the seven materials planners work, is in the middle of the shop floor, but is an enclosed and separate office space. In comparison, the production and maintenance employees who make up the petitioned-for unit work on the shop floor. They are spread out and likewise work in functional groups. Their supervisors sit separately from them, together in a skilled trades supervisors' office on the shop floor.

#### **B. Job Skills and Functions**

Newly-hired engineers are required to have a four-year degree, and a four-year degree is strongly preferred for materials planners. The Employer prefers a two-year degree for manufacturing technical associates, and requires one for materials planners.

The designers and technical associates must possess a high school diploma. Production and maintenance employees need either a high school diploma or a GED.

Designers design products according to customer specifications. The product engineer and product engineering technical associates work with customers and track the design-build process of final products to ensure that they meet the customer's needs. Most of the manufacturing engineers and technical associates write programs and processes to enable the products designed and planned in Product Engineering to be manufactured on the shop floor. The materials planners coordinate the product manufacturing process. Thus, the technical employees perform intellectual work. This work requires computer skills ranging from basic office software to specialized programming software. It is true that "short run" machinists also write programs, but they use a user-friendly interface right on the machines, not computer design software at a terminal located in an office. Similarly, CNC machinists edit programs written by engineers right on their machines. They do so without permission and as needed, but editing programs is a routine part of their machining duties, not the major share. In sum, while the production and maintenance employees manufacture parts using machines, assemble products, or perform manual labor, the technical employees do not perform any of those functions as part of their regular jobs.

### **C. Working Conditions**

All of the facility's employees use the same restrooms, parking lot, and lunchroom. All employees are subject to one employee handbook, and the same rules and regulations. All employees have the same health and welfare plans available to them. All employees receive an end-of-the year bonus and are eligible for a supervisor-

nominated “spot” or “impact” bonus for superior work. Yet, the technical employees’ wages range from a minimum of \$16.18 an hour (converted from an annual salary) to a maximum of \$38.69 an hour. The average ranges from \$20.96 to a high of \$34.31. In comparison, the petitioned-for job classifications range from a minimum wage of \$13.00 an hour to a maximum of \$22.69. Their average ranges from \$15.54 to a high of \$23.01. While the petitioned-for employees are paid hourly and swipe a magnetic card to clock in and out at the start and end of their shifts, technical non-exempt employees track their time in Kronos, a timekeeping computer software program. Engineers are exempt employees and do not track their time at all.

The Employer’s facility operates on three shifts. First shift is 6:45 a.m. – 3:15 p.m., second shift, 2:45 p.m. – 11:15 p.m., and third shift, 10:45 p.m. – 7:15 a.m. Employees in the petitioned-for unit are equally divided among the three shifts, while the technical employees work mostly on first shift (referred to by production and maintenance employees as “daylight”). Roy Knepper, a product engineering technical associate, and Charles Lakatos, a manufacturing engineering technical associate work second shift; Donna Tolbert, a materials planner, works swing shift; and Jeff Pieper, manufacturing engineering technical associate, works third shift.

All employees are entitled to one ten-minute break each shift and one 30-minute lunch break. Production and maintenance employees’ break and lunch times are assigned by their supervisors; technical employees may take their 10-minute break at a time of their choosing, and may take their lunch break anytime between 11:30 a.m. and 1:00 p.m. In addition, the technical employees may eat in their office work areas, but the production

and maintenance employees may not eat on the shop floor where they work because food is forbidden there.<sup>6</sup>

Production and maintenance employees are generally required to wear steel-toed safety boots, long pants, and ear and eye protection. Some of the technical employees also wear steel-toed safety boots and dress similarly in jeans; all apparently wear eye protection when they are on the shop floor. Yet technical employees work dress was generally described as business casual or casual. There was testimony that some had been seeing wearing sneakers and penny loafers.

#### **D. Contact or Interchange**

The sales and manufacturing cycle requires the technical employees and the production and maintenance employees to communicate with one another, sometimes regularly, but they do not generally perform one another's work. Named exceptions are two product engineers and a technical associate who recently worked as inspectors during a slow work period (Greg Knepper, Marlin Herr, and Greg Bailey). Also, the machinist's apprentice program rotates machinists-in-training through product engineering, manufacturing engineering, and production control. Fourth-year apprentice machinist Dustin Cleveland recently "worked with" designers for six weeks, but not as a designer. Further, many of the technical employees transferred from the shop floor. There have been two recent transfers of machinists to technical associates: Chris Runshaw in 2008; and Steve Bakner in 2009. In addition, machinist Brian Mandaval transferred from Harrisburg in 2010. He was a technical associate. Thus, with one exception, the permanent transfers have always gone one way: off the shop floor and into the office.

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<sup>6</sup> Yet, there was testimony that both the employees in dispute and the petitioned-for have been seen eating on the shop floor.



The Employer's witnesses' and the Petitioner's witnesses' accounts of the amount of time technical employees spend with production and maintenance employees were widely divergent. Peiffer's estimates changed several times over the course of the two-day hearing. These discrepancies may be explained by his rationale that most engineering support goes to Heat Treat, Vertical Milling, and Lathes, not Machining and Assembly, but no employees from those functional areas testified. Thus, the weight of the testimony tends to show that technical employees generally spend, at most, two hours a week, or five percent of their working time, interacting with production and maintenance employees. These interactions are generally brief and infrequent for any individual production and maintenance employee, yet apparently the technical employees are frequently seen on the shop floor while in transit from one place to another.

Finally, production and maintenance employees meet at the start of their shifts for three to five minute "go meetings" at which their group leader or supervisor tells them their daily priorities. Technical employees are not required to attend those meetings but apparently some have attended to address the employees or in a manager's stead. Technical assistant Kevin Scott McNulty testified that he has attended one go meeting in six years.

#### **E. Desires of the Parties, History of Bargaining, and Organizing**

The Petitioner clearly desires to exclude the technical employees, while the Employer just as clearly wishes to include them. Although the Petitioner represents that the production and maintenance employees do not wish to be included in a unit with any of the disputed job classifications, there was no testimony by any employee as to his or her bargaining unit composition desires. None of the facility's employees are currently

represented and the parties have no history of bargaining. No union currently seeks to represent the technical employees of this manufacturing facility.

Taking all of the relevant factors into consideration, it is clear that the technical employees' interests are in many respects significantly different from those of the production and maintenance employees. They earn significantly higher wages, and have control over their breaks and lunch periods. *Weldun Int'l.*, 321 NLRB 733, 752 (1996). They work in a separate space from the production and management employees. Their jobs require a range of education and skill, and unlike those of the petitioned-for employees, are performed mostly in an office setting. *Id.* at 752. Unlike the petitioned-for employees, the majority of the in-dispute employees work "daylight." No case cited by the Employer requires the inclusion of the technical employees despite their disparate work hours. In fact, the Employer's cases counsel that disparate work hours weakens the community of interest among employees. *See, Pineville Kraft Corp.*, 173 NLRB 863 (1968) (storeroom employees who work on the same 24-hour, 7-day a week basis as production and maintenance employees, and laboratory technicians); *Lilliston Implement Co.*, 121 NLRB 868, 870 (1958), (clerical employees who work generally the same hours as production employees).

Further, the technical employees do not perform any of the same job functions as the petitioned-for employees, and they spend less than five percent of their working hours interacting with them. *Airsearch Manufacturing Company of Arizona*, 137 NLRB 632 (1962), cited by the Employer, and its other cases involving technical employees do not mandate the inclusion of the technical employees in the unit here. In *Airsearch*, 137 NLRB at 635, the Board used a *Sheffield* analysis and also found the entire operation to

be technical in nature. Here, there is no contention that the Employer's entire operation is "essentially technological." *Id.* Nor is there any evidence that those employees' jobs "require[] their presence almost constantly" on the shop floor. *The Kroger Co.*, 173 NLRB 397, 397 n. 5 (1968). And unlike the designer in *PECO Energy Co.*, 322 NLRB 1074 (1997), the designers here do not share a wage structure with the petitioned-for employees, and the Board's presumption that only system-wide units are appropriate for public utilities does not apply on these facts. *Id.* (citing *Baltimore Gas and Elec. Co.*, 206 NLRB 199, 201 (1973)).

The evidence showed that many of the technical employees originally worked in some capacity on the shop floor, either at the Waynesboro facility or at another facility. Yet, with the exception of machinist Mandaval, that exchange has always gone from the shop floor to the office. Temporary interchange has been minimal, with the Employer recently assigning three technical employees to production and maintenance duties for a period of two weeks and one machinist's apprentice to "work with" designers for six weeks, but not to actually design products. Under these circumstances, it appears that the interchange between the production and maintenance employees and the employees in dispute is not so frequent and substantial as to require them to be included in one unit. *See, Bartlett Collins Co.*, 334 NLRB 484, 485 (2001).

Finally, the technical employees do not share common supervision or managers with the petitioned-for employees. In the only case offered by the Employer on this issue, *Celotex Corporation*, 180 NLRB 62, 62 (1969), while the laboratory technicians reported to different supervisors than laboratory testers, the technicians spent 50 to 60 percent of their time in the laboratory with the testers, and sometimes actually ran tests,

either alone or with the assistance of the tester. In addition, both job classifications were salaried. Under those circumstances, the Board found that the technicians and testers shared such a community of interest as to be an appropriate unit. In contrast, in the instant case, none of these factors exist: the employees in dispute are salaried, while the petitioned-for employees are hourly; the two groups of employees do not share any job duties; and they spend only five percent of their working time together. Under all of the circumstances, I find that the designers, product engineer, product engineering technical associates, manufacturing engineers, manufacturing engineering technical associates, and materials planners' interests differ considerably from those of the production and maintenance employees, and therefore exclude them from the unit.

#### **IV. THE OTHER JOB CLASSIFICATIONS IN-DISPUTE**

I find that the remaining job classifications have a closer community of interest with the technical employees than with the production and maintenance employees. Therefore, I will exclude the product engineering parts clerk, technical associate Angela Dodson, the materials associate, and the environmental safety and health coordinator from the bargaining unit.

##### **A. Product Engineering Parts Clerk**

The Employer has argued that the product engineering parts clerk and materials associate are plant clericals. I find them to be such. I further find that, based on record evidence, that Manufacturing Engineering technical associate Angela Dodson is also a plant clerical. Clerical employees whose principal functions and duties relate to the production process, as distinguished from general office operations, are plant clericals. *Desert Palace, Inc.*, 337 NLRB 1096, 1098 (2006). Contrary to the Employer's

arguments, however, Board law does not require that these plant clericals be included in the petitioned-for production and maintenance unit. In *Goodman Mfg. Co.*, 58 NLRB 531, 533 (1944), cited by the Employer for the proposition that plant clericals must be included in the same unit as production employees, the Board included the plant clericals in the unit, not on a *per se* basis, but because the plant clericals were in daily contact with the production and maintenance employees and all worked under the same supervision. Thus, their interests were “more intimately related to those of the production and maintenance employees than to those of the office employees.” *Id.*; accord, *Brown & Root, Inc.*, 314 NLRB 19, 23-24, (1994) (plant clericals who communicate frequently with unit employees, assist unit members with their work, and occasionally substitute for them properly included in bargaining unit). As I demonstrate below, such is not the case here.

The product engineering parts clerk, Deborah Rhoads, enters the parts required for new designs into the computer system, duties that are undeniably clerical in nature. That clerical employees perform secretarial duties is no obstacle to finding them to be plant clericals, “if other factors link them to the production process and other production employees.” *Id.* at 1099. Rhoads’ work is performed as a precursor to the designers beginning their work and is therefore linked to the production process. Like the technical employees, Rhoads works in an office and in “daylight.” In fact, her desk is located in the Product Engineering department along with the designers, engineer and technical associates. She does not work with the production and maintenance employees on a daily basis. Also like the technical employees, Rhoads is non-exempt and salaried. She therefore does not clock in, and chooses her own break and lunch time. And, like the

technical employees in Product Engineering, Rhoads reports to Isaac Cruz, who does not supervise anyone in production and maintenance. For all of these reasons, inclusion of the product engineering parts clerk in the petitioned-for unit is not mandated, further, she may properly be included in a separate unit with the technical employees.

**B. Manufacturing Engineering Technical Associate Angela Dodson**

Hearing testimony established that technical associate Angela Dodson performs unique duties within her job classification. She does not write programs like the other technical associates in her functional area, but files routings in cabinets located on the shop floor. Her work, rather than being “of a technical nature involving the use of independent judgment and requiring the exercise of specialized training [.]” *Litton Indus.*, 125 NLRB at 724, is clearly clerical in nature, like the parts clerk. Unlike the parts clerk, however, the production and maintenance employees apparently see Dodson regularly, even if they do not work with her. Several witnesses commented on the fact that, unlike them, she wears skirts, dresses, “nice tops,” and high-heeled and open-toed shoes on the shop floor. In addition to dressing differently, like the technical employees and parts clerk, Dodson works first-shift only; has a desk in an area separate from the petitioned-for employees; does not punch in and out of work; is free to choose her break and lunch times; and does not share common supervision with the production and maintenance employees. While there are factors that would favor her inclusion in the petitioned-for unit, on balance, I find that the foregoing facts are sufficient to find that she has a closer community of interest with the excluded technical employees, and, thus, her inclusion in the petitioned-for-unit is not required.

### **C. Materials Associate**

Materials associate Anne Thomas is a Production Control employee, but her duties differ from those of the materials planners, as the Employer pointed out during the hearing. Thomas seeks out the status of machining jobs and communicates their priority to the machine operators. Like the other plant clericals, her position is salaried and non-exempt. She chooses her own break times. Like the technical employees and other plant clericals, Thomas works first-shift only. One witness testified that he has seen Thomas wearing skirts on the shop floor. The consensus among witnesses was that Thomas spends substantial time on the shop floor although she works out of an office—she sits with the materials planners in Production Control.

The evidence tends to show that the Thomas, who appears to have a greater frequency of contact with the petitioned-for employees than the other job classifications in dispute, could be properly included in the unit found appropriate. At the same time, the materials associate also shares a community of interest with the other excluded employees. In these circumstances, the Board does not force the inclusion of a classification that may properly be included in another appropriate unit. Where either the petitioned-for unit or a unit of the Board's creation would be appropriate, Board precedent favors granting the petitioned-for unit. *See, Syracuse Univ.*, 325 NLRB 162, 169 (1997) ("The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or the most appropriate unit for collective bargaining").<sup>7</sup> Therefore, the materials associate should be excluded from the bargaining unit.

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<sup>7</sup> *See also, Lundy Packing Co., Inc.*, 314 NLRB 1042, 1043 (1994) (citing *E. H. Koester Bakery & Co.*, 136 NLRB 1006 (1962)).

#### **D. Exclusion of Environmental, Safety and Health Coordinator**

Finally, I also exclude the environmental, safety, and health coordinator from the bargaining unit. Ronald Lebo, the coordinator, ensures that the plant meets corporate requirements for safety and the environment. He does not perform any of the functions of the petitioned-for employees, although a Stine testified that Lebo “works with” them. None of the production and maintenance witnesses corroborated this testimony. Like the technical employees, Lebo is a salaried, non-exempt employee, who has a desk in the product engineering office. Like the technical employees and other plant clericals, Lebo works first-shift, is non-exempt and salaried. He chooses his own break and lunch times and does not share common supervision with the petitioned-for employees. The coordinator properly may be excluded from the bargaining unit.

#### **V. SUMMARY**

The Board uses a two-step procedure to select an appropriate unit under Section 9(b) of the Act. *Overnite Transp. Co.*, 331 NLRB 662, 664 (2000) (citing *NLRB v. Lake County Assn. For the Retarded*, 128 F.3d 1181, 1185 n. 2 (7th Cir. 1997); *State Farm Mutual Auto. Ins. Co. v. NLRB*, 411 F.2d 356, 358, 360-361 (7th Cir. 1969) (*en banc*)). First, the Board examines the petitioned-for unit; if that unit is appropriate, the inquiry ends there. *Id.* If the Board finds that unit inappropriate, it may select alternative units, either as suggested by the parties or of the Board’s creation. *Id.* Generally, the goal is to select “the smallest appropriate unit encompassing the petitioned-for employees.” *Bartlett Collins*, 334 NLRB at 484. The unit need only be an appropriate unit, not the most appropriate one. *Id.*



Based on the findings and analysis set forth above, I find that the petitioned-for unit is an appropriate unit, and that under *Sheffield* and its progeny inclusion of the disputed technical employees is not required.

### CONCLUSIONS AND FINDINGS

Accordingly, given the record, I will direct an election.

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, is a labor organization as defined in Section 2(5) of the Act, and claims to represent certain employees of the Employer.
4. There is no prior history of collective bargaining between the Union and the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
6. The Employer, TYCO ELECTRONICS CORPORATION, is a Pennsylvania corporation with an office and place of business in Waynesboro, Pennsylvania, and is engaged in the manufacture of electrical components. During the past twelve (12) months, a representative period, the Employer sold and shipped from its Waynesboro, Pennsylvania, facility goods valued in excess of \$50,000 directly to points outside the State of Pennsylvania. During the same time period, the Employer received raw materials and supplies at its Waynesboro, Pennsylvania facility in excess of \$50,000 from points directly outside the State of Pennsylvania.
7. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees in shipping and receiving, hand tool repair, laser operator, machinists, assemblers, heat treat, blackening, painters, salvage, stores, tool crib, picking, quality control inspectors and group leaders employed by the Employer at its Waynesboro, Pennsylvania, facility; but excluding clerical, technical, office, professional, administrative, managerial and confidential workers, which includes product engineers, part engineering clerk, materials planner, technical associates, designers, safety and health coordinators, project engineer, maintenance value stream leader, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by **International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW**. The date, time, and manner of the election will be specified in the notice of election that the Regional Office will issue subsequent to this Decision.

#### ***A. VOTING ELIGIBILITY***

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of issuance of this Decision including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are

eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.) Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received by the Regional Office, National Labor Relations Board, Region 5, 103 S. Gay Street, Baltimore, MD 21202, on or before

**August 11, 2010.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website [www.NLRB.gov](http://www.NLRB.gov),<sup>8</sup> by mail, by hand or courier delivery, or by facsimile transmission at (410) 962-2198. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

***C. NOTICE OF POSTING OBLIGATIONS***

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it

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<sup>8</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Regional, Subregional and Resident Offices and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website, [www.nlr.gov](http://www.nlr.gov).

has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

***Right to Request Review:*** Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

***Procedures for Filing a Request for Review:*** Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **August 18, 2010**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period

within which to file.<sup>9</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/Wayne R. Gold

Dated: **August 4, 2010**

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Wayne R. Gold, Regional Director  
National Labor Relations Board  
Region 5

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<sup>9</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.